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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/708,138

02/09/2004

Douglas J Kroll

04204

2137

23688

7590

08/25/2004

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EXAMINER

GUTMAN, HILARY L

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/708,138		KROLL ET AL.	
	Examiner		Art Unit	
	Hilary Gutman		3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/9/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cargo and the vehicle cargo area of claim 1; the pair of parallel spaced apart retention rails of claim 2; the vehicle and the pair of retention rails positioned with their longitudinal axis in line with the longitudinal axis of the vehicle of claim 6; and the vehicle and the pair of retention rails positioned with their longitudinal axis perpendicular to the longitudinal axis of the vehicle of claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

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and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities:

At [0012], line 1, "aspect of" should be "aspect," and the comma after invention should be deleted. At [0013], line 1, "of" should be deleted.

Appropriate correction is required.

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

4. Claim 1 is objected to because of the following informalities:

In claim 1, line 6, the phrase "for accepting" should perhaps be followed by what the retention rail accepts. On line 7, "anda" should be "and a". In line 9, "cargo" should be "the cargo". On line 10, "a vehicle cargo area" should be "the vehicle cargo area".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 2 and 6-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, with regard to claim 2, the “pair of parallel spaced apart retention rails” is recited for which the specification is not enabling. With regard to claim 6, the “pair of parallel spaced apart retention rails is positioned with their longitudinal axis in line with the longitudinal axis of the vehicle” is recited for which the specification is not enabling. Finally, with regard to claim 7, the “pair of parallel spaced apart retention rails is positioned with their longitudinal axis perpendicular to the longitudinal axis of the vehicle” is recited for which the specification is not enabling. The specification is not enabling for the recitations (above) because there is no language describing these features and no instances of any mention of these features.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2, 6, and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Malinowski.

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Malinowski (5,544,998) discloses a cargo retention rail system (Figure 2) made as an integral (or attached) part of a vehicle floor panel 12 for securing cargo (not shown) in a vehicle cargo area comprising in cooperative combination: at least one cargo retention rail 22 attached to a vehicle floor panel, the cargo retention rail having a channel with an exposed opening for accepting; a cargo retention locking device 60; and a cargo retaining device 44 mountable to the cargo retention locking device; thereby allowing for the cargo to be securely positioned within the vehicle cargo area.

With regard to claim 2, there are a pair of parallel spaced apart retention rails attached to the vehicle floor panel.

With regard to claim 6, the pair of parallel spaced apart retention rails is positioned with their longitudinal axis in line with the longitudinal axis of the vehicle.

With regard to claim 8, the at least one cargo retention rail is attached to the vehicle floor panel.

With regard to the limitation that the rail system is “molded” as an integral part of the floor panel, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

9. Claims 1-2 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Miyahara et al.

Miyahara et al. (6,435,590) disclose a cargo retention rail system made as an integral or attached part of a vehicle floor panel (Figure 5) for securing cargo (seat) in a

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vehicle cargo area comprising in cooperative combination: at least one cargo retention rail 8a attached to a vehicle floor panel, the cargo retention rail having a channel with an exposed opening for accepting; a cargo retention locking device 29; and a cargo retaining device 30 mountable to the cargo retention locking device; thereby allowing for the cargo to be securely positioned within the vehicle cargo area.

With regard to claim 2, there are a pair of parallel spaced apart retention rails attached to the vehicle floor panel.

With regard to claim 7, the pair of parallel spaced apart retention rails is positioned with their longitudinal axis perpendicular to the longitudinal axis of the vehicle.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malinowski in view of Peterson.

Malinowski is silent on the material used for the retention rail.

Peterson (6,435,421) teaches extruded aluminum retention rails.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rails of Malinowski out of extruded aluminum as taught by Peterson in order to provide the rails with strength without adding additional weight to the system.

With regard to the “extruded” aluminum limitation, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

13. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malinowski in view of Huetteman et al.

Malinowski is silent on the material used for the retention rail.

Huetteman et al. (5,960,721) teach polymer rails which provide impact resistance and resist damage.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rails of Malinowski out of a polymer as taught by Huetteman et al. in order to provide the rails with impact resistance.

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14. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malinowski in view of Vennell.

Malinowski is silent on the material used for the retention rail.

Vennell (6,270,017) teaches polymer rails and epoxy resin blocks.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rails of Malinowski out of a polymer as taught by Vennell in order to provide the rails with impact resistance.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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17. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

or faxed to:

(703) 872-9326, (for formal communications intended for entry)

or:

(703) 746-3515, (for informal or draft communications, please clearly

label "PROPOSED" or "DRAFT").



Hilary Gutman

August 18, 2004